IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
C.W.P. No.11564 of 2006
DATE OF DECISION:5.9.2006
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Bishambar Dass

..PETITIONER

VS.

Presiding Officer. Labour Court Ludhiana and another.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.

HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. Ashwani Prashar, Advocate
for the petitioner.
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JUDGMENT:

The petitioner is aggrieved against the award dated 3.2.2006 passed by the Labour Court. Vide the impugned award the Labour Court dismissed the claim of the petitioner for re-instatement with continuity of service and back wage.

The facts emerge out from the records of the case are that the petitioner, at one point of time was Secretary of respondent No.2-Society. There were allegations against him regarding misappropriation of funds of the Society. As such, he was ordered to be suspended vide resolution dated 9.11.1994. However, vide resolution dated 16.12.1994, he was ordered to be re-instatement. The resolution was sent to the Assistant Registrar Cooperative Societies, Jagraon. But instead of according approval to the said resolution dated 16.12.1994, the Assistant Registrar, Cooperative Societies, Jagraon vide letter dated 24.3.1995 recommended the suspension of the petitioner and ordered an enquiry against the petitioner. Accordingly, Enquiry Officers were appointed to enquire into the matter. The petitioner

was served with two charge-sheets dated 9.5.1995 and 11.8.1995 containing 12 and 10 allegations respectively. The allegations were mainly of embezzling the amount from the funds of Society besides non-completion/ non-auditing of records; remaining absent from the office of Society; having partnership in a brick kiln without prior permission of the authorities; non-compliance of instructions of the higher authorities etc. The petitioner filed reply to the first charge-sheet dated 9.5.1995. However, no reply to the second charge-sheet was filed by him. The Enquiry Officers submitted their report against the petitioner. Ultimately, the Administrator of the Society vide resolution dated 20.12.1995 held that the charges levelled against the petitioner are proved. It accordingly ordered termination of the services of the petitioner from the Society w.e.f. 9.11.1994, the date on which he was suspended. Dissatisfied with the same, the petitioner preferred an appeal on 22.12.1995 before the Deputy Registrar, Cooperative Societies, Ludhiana, which was dismissed on 18.7.1996. His revision before the Joint Registrar, Cooperative Societies, Patiala, against the said order, was also dismissed on 13.6.1997.

Thereafter, the petitioner raised an industrial dispute challenging his termination on the ground that he was not afforded full opportunity of being heard during the enquiry. His further pleas were that the charges levelled against him were not proved and that his services were terminated with retrospective effect, by the Administrator, who has no authority to do so. The claim of the petitioner was resisted by the respondent-Society. Some preliminary objections viz. limitation;res judicata etc were raised. On merits, their stand was that the petitioner had in fact committed embezzlement of Rs.326116.61 of the funds of Society. A fair

and proper enquiry was held. Since the charges levelled against the petitioner were found proved, his services were rightly terminated from the Society.

Upon the pleadings of the parties, issues were settled by the Labour Court. Vide order dated 17.11.2004, the Labour Court, treating issue No.2 with regard to fairness of enquiry as preliminary one, held that no proper procedure was adopted by the Enquiry Officer, as no statement of witnesses were recorded. Accordingly, it was held that no fair and proper enquiry was held against the petitioner prior to terminate his service. Thus, issue No.2 was decided against the respondent-Society. Since, the respondent-Society had reserved its right to produce evidence on merits, in case the enquiry is found vitiated, it was allowed to lead evidence in order to prove the charges levelled against the petitioner. Thereafter, evidence was led by both the parties. The Labour Court vide the impugned award held the charges No.1, 2, 4, 6, 7, 8, and 10 and charges No. 2, 4, 8, and 9 contained in first and second charge sheets respectively, proved against the petitioner whereas the remaining charges were found unproved. Considering the gravity of the proved charges of embezzlement and the fact that as many as 27 awards were passed against the petitioner, the Labour Court concluded that the petitioner is an unwanted employee of the Society. It accordingly held the termination of the petitioner justified and, as stated above, dismissed the claim of the petitioner. Hence this writ petition.

We have heard learned counsel for the petitioner and have gone through the paper-book carefully.

There were two charge-sheets against the petitioner-workman. The first charge-sheet contained 12 charges and second charge-sheet

contained 10 charges relating to misappropriation/embezzlement, absence from duty, non-completion/ non-auditing of records etc. It is also not in dispute that he was placed under suspension on 9.11.1994 and vide resolution dated 20.12.1995 (Annexure P-4) his services were terminated. Further, it is not disputed that the said resolution was quashed by this Court and remanded it for fresh proceedings in accordance with law. There is also no dispute that the Labour Court had treated the issue with regard to fairness of enquiry as a preliminary one, in which it was observed that no fair and proper enquiry was conducted in this case. This led the Labour Court to adjudicate the charges itself on the basis of the evidence led by the parties. A bare perusal of the award shows that out of twelve charges, in the first charge-sheet, seven charges had been duly proved including that of misappropriation/ embezzlement and in second charge-sheet, out of ten charges, four charges were duly proved, again including that of misappropriation and embezzlement. A bare perusal of award also shows that there were as many as 28 awards were passed against the petitioner, which he had never challenged before any forum, except the one, referred to above. It is evident from the impugned award, the petitioner had categorically stated that he had not made any payment qua any of the award and also remained in jail for non-compliance of one of the award. The said awards, which as discussed above, not challenged by petitioner, obviously were of recovery of certain amounts. It is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In the instant case, what emerges is that the petitioner-workman's past record is full of blemishes. In this backdrop, the

last prayer of the petitioner-workman for invoking the jurisdiction under Section 11-A of the Act is also not sustainable. The power of interference with the quantum of punishment is extremely limited." This exactly has been followed in **Director General, RPF v. Ch. Sai Babu, (2003) 4 SCC-331** wherein it was observed as follows:-

> " Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a Tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant facts including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

Keeping in view the past record of the petitioner-workman and the ratio laid down in Ch. Sai Babu's case (supra), this is not a fit case where jurisdiction under Section 11-A of the Act can be invoked.

For the discussion above, we are of the considered opinion that the Labour Court has rightly declined the indulgence. No ground is made out to interfere with the just and reasoned award of the Labour Court. The petition is wholly without merit and the same is dismissed accordingly in limine.

(ARVIND KUMAR)
JUDGE

September 5,2006 **(J.S. NARANG)**
Jiten **JUDGE**